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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,453	02/18/2004	Eric Jason Stelnicki	1027-2DIV	1761

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EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,453

Applicant(s)

STELNICKI, ERIC JASON

Examiner

M. Safavi

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9,18,23,26-28,30,32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9,18,23,26-28,30,32 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on February 18, 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3673

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 23, 26-28, 30 and 34, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ihnat, Jr. '914 in view of any of El Hassen '367 or Steffen '133 or Simpson '109.

Ihnat, Jr. teaches an apparatus comprising a headgear and at least one toroidal insert, cushion or support pad 28 that is removably attachable to the headgear wherein the at least one insert is inserted into a pocket or receiver 24 within the headgear.

Each of El Hassen, Steffen, and Simpson teach application and utilization of a cushion or support pad along the rear portion of a protective headgear, 2 of Fig. 1 of El Hassen, 18 of headgear 10 of Steffen, and any of the rear cushions shown by Simpson.

To have formed the Ihnat, Jr. headgear with a rear insertion pocket so as to allow for removably attaching the support cushion pad 28 along a rear portion of a protective headgear, (including left rear or right rear, thus tangential to the side cushion pads), so as to permit a user to add or change support cushion pad along the rear to protect the back of the users head, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught

Art Unit: 3673

by any of El Hassen, Steffen, and Simpson with Simpson particularly teaching application of a toroidal support pad 19 of Fig. 4.

As concerns **claim 26**, any of the pads of Ihnat, Jr., as modified, thus a second support pad, is arranged to be stackable with at least one other second, or another, support pad for one of matching and exceeding the contour of the infant's head on a contra lateral side. The recitation "for controllably positioning and supporting a head of an infant while lying down" is a statement of intended use as is "the at least one rear support pad is arranged to be stackable with at least one other rear support pad for one of matching and exceeding the contour of the infant's head on a contra lateral side." A recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the claimed apparatus from the prior art - if the prior art has the capability to so perform (see MPEP 2114 and Ex parte Masham, 2 USPQ2d 1647 (1987)). In the instant case, the headgear of Ihnat, Jr., as modified, is capable of positioning and supporting the head of an infant while lying down. And, the support pads of the modified Ihnat, Jr. headgear can be "stacked" in any fashion particularly, outside of the headgear. Or, one can stack any number of other cushions under any cushion of the modified Ihnat, Jr. headgear when a wearer is lying upon a surface.

As concerns **claim 30**, Ihnat, Jr., as modified, discloses a using a headgear to controllably position and support a head of a person while in any given position. The method of selecting at least one support pad, attaching the selected at least one support pad to the headgear, and positioning a person to

Art Unit: 3673

place the support pad between the head of the person and the surface is inherent from Ihnat, Jr., as modified. It would have been a further obvious expedient to one having ordinary skill in the art at the time the invention was made to have utilized the modified Ihnat, Jr. cap with an infant, so as to allow for protection of the infant's head during sleep.

As concerns **claims 27 and 34**, Ihnat, Jr., as modified, further discloses that the step of attaching the selected at least one support pad to the headgear includes inserting the selected at least one support pad into a pocket on the headgear.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ihnat, Jr. '914 in view of any of El Hassen '367 or Steffen '133 or Simpson '109 as applied to claims 18, 23, 26-28, 30 and 34 above, and further in view of any of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924.

Each of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924 teach application and utilization of support pads as a stack to align a head and/or body of a user, Fig. 4 of Alivizatos '403; Figs. 1-7 of Painter '784; 12 and 16 of Ross '665; and Figs. 2-4, 7, 25B, and 26B of Brady et al. '924. Therefore, to have provided for application and utilization of support pads as a stack to align a head and/or body of an infant/child along with utilization of the modified headgear of Ihnat, Jr., thus assuring a comfortable position and posture during sleep, or at least, comfortable rest, would have been obvious to one having ordinary skill in

Art Unit: 3673

the art at the time the invention was made as taught by any of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924.

Claims 9, 30, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ihnat, Jr. '914 in view of any of El Hassen '367 or Steffen '133 or Simpson '109 as applied to claims 18, 23, 26-28, 30 and 34 above, and further in view of Bridley '832.

Bridley discloses an infant positioning system comprising an infant support device (10) configured for receiving the infant. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided or coupled the modified Ihnat, Jr. cap with the support device positioning system of Bridley, so as to allow for protection of the infant's head during sleep.

As for **claims 30 and 34**, if not already taught by Ihnat, Jr., one of ordinary skill in the art would have found it obvious, if not intrinsic, to have positioned an infant wearing the supplementary headgear upon the surface of the infant support device.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ihnat, Jr. '914 in view of any of El Hassen '367 or Steffen '133 or Simpson '109 and in view of Bridley '832 as applied to claims 9, 30, and 34 above, and further in view of any of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924.

Art Unit: 3673

Each of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924 teach application and utilization of support pads as a stack to align a head and/or body of a user, Fig. 4 of Alivizatos '403; Figs. 1-7 of Painter '784; 12 and 16 of Ross '665; and Figs. 2-4, 7, 25B, and 26B of Brady et al. '924. To have provided for application and utilization of support pads as a stack to align a head and/or body of an infant along with utilization of the modified headgear of Ihnat, Jr., thus assuring a comfortable position and posture during sleep, or at least, comfortable rest, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by any of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924.

Claims 18, 23, 26, 28, and 30, are rejected under 35 U.S.C. 103(a) as being unpatentable over El Hassen '367 in view of Clavelle '840 and either of Simpson '109 or Ihnat, Jr. '914.

El Hassen discloses a cap provided with support pads 2 including a rear support pad. The padded parts may be fastened to the band by any means, col. 2, lines 38-41.

Clavelle teaches removably fastening auxiliary parts to a cap as by hook and loop fasteners, snaps, etc. And, each of Simpson '109 and Ihnat, Jr. '914 teach utilization of a toroidal cushion member within and about a cap to cushion or protect the wearer's head.

Therefore, to have attached the pads of El Hassen in a removable fashion as by hook and loop fastening means, thus permitting a user to wash or change

Art Unit: 3673

support cushion pads, as well as utilize toroidal cushioning members as one or any number of the padded parts would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Clavelle and either of Simpson '109 and Ihnat, Jr. '914.

As concerns **claim 30**, El Hassen, as modified, discloses a using a headgear to controllably position and support a head of a person while in any given position. The method of selecting at least one support pad, attaching the selected at least one support pad to the headgear, and positioning a person to place the support pad between the head of the person and the surface is inherent from El Hassen, as modified. It would have been a further obvious expedient to one having ordinary skill in the art at the time the invention was made to have utilized the modified El Hassen cap with an infant/child, (see line 42 of col. 1 of El Hassen), to provide for comforting sleep or, at least, comfortable rest as well as to protect the child during sleep or rest.

As concerns **claim 26**, any of the pads of El Hassen, as modified, thus a second support pad, is arranged to be stackable with at least one other second, or another, support pad for one of matching and exceeding the contour of the infant's head on a contra lateral side. The recitation "for controllably positioning and supporting a head of an infant while lying down" is a statement of intended use as is "the at least one rear support pad is arranged to be stackable with at least one other rear support pad for one of matching and exceeding the contour of the infant's head on a contra lateral side." A recitation directed to the manner in which a claimed apparatus is intended to be used does not distinguish the

Art Unit: 3673

claimed apparatus from the prior art - if the prior art has the capability to so perform (see MPEP 2114 and Ex parte Masham, 2 USPQ2d 1647 (1987)). In the instant case, the headgear of El Hassen, as modified, is capable of positioning and supporting the head of an infant while lying down. And, the support pads of the modified El Hassen headgear can be "stacked" in any fashion particularly, outside of the headgear. Or, one can stack any number of other cushions under any cushion of the modified El Hassen headgear when a wearer is lying upon a surface.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over El Hassen '367 in view of Clavelle '840 and either of Simpson '109 or Ihnat, Jr. '914 as applied to claims 18, 23, 26, 28, and 30 above, and further in view of any of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924.

Each of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924 teach application and utilization of support pads as a stack to align a head and/or body of a user, Fig. 4 of Alivizatos '403; Figs. 1-7 of Painter '784; 12 and 16 of Ross '665; and Figs. 2-4, 7, 25B, and 26B of Brady et al. '924. Therefore, to have provided for application and utilization of support pads as a stack to align a head and/or body of an infant/child along with utilization of the modified headgear of El Hassen, thus assuring a comfortable position and posture during sleep, or at least, comfortable rest, would have been obvious to one having ordinary skill in

Art Unit: 3673

the art at the time the invention was made as taught by any of Alivizatos '403, Painter '784, Ross '665, and Brady et al. '924.

Response to Arguments

Applicant's arguments with respect to claims 9, 18, 23, 26-28, 30, 32, and 34 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



**MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354**

M. Safavi
July 22, 2005